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IN THE

Supreme Court of the United States.

B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, E. THOMPSON, SIMON ANDERSON and KARL STEVENSON, Seamen,

Libellants-Appellants,

v.

The British Bark "EUDORA," Whereof ALFRED E. DICKSON is Claimant

Appellee.

Certified from the United States Court of Appeals, for the Third Circuit.

Brief of Dickson, Claimant of Bark "Eudora," Appellee.

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IN THE

Supreme Court of the United States.

PATTERSON, *et al.*,
Libellants-Appellants

v.

THE BRITISH BARK "EUDORA," whereof ALFRED E. DICKSON is claimant,
Appellee.

CERTIFIED FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF FACTS.

This case raises the question of the validity of the provision of the Act of Congress of December 21, 1898, forbidding the payment of wages, in advance, to a seaman shipping on board a foreign vessel at a port of the United States.

The libellants, one or more of whom are American citizens, shipped on board the British bark "Eudora," at New York, for a voyage to Turks Island and thence to either an American or Canadian port.

It was the duty of the master of the vessel, under the British law, to have the seaman sign a

contract of the form prescribed by the Merchants' Shipping Act of Great Britain, and the shipping articles signed by the seamen at New York, in the presence of the British Consul, and with his sanction, were of the form required by that law.

By that contract the libellants submitted themselves to the operation of the British law, so far as their rights as seamen were concerned, and they were entitled to all the benefits conferred upon seamen by it and were subject to all the obligations imposed by it.

At the time the libellants shipped on the "Eudora," they were indebted to a shipping agent for board and for goods furnished to them by him and by their direction, and with their consent, the amount of that indebtedness was paid by the master of the bark to the shipping agent and the shipping contract was drawn so as to cause the sum advanced by the master to be deducted from their wages to be subsequently earned. This contract was lawful under the British law, and there is no question but that the libellants were properly indebted to the shipping agent for board and the goods sold to them, and there is no claim that any advantage whatever was taken of them.

At the conclusion of the voyage in Philadelphia, the libellants were not entitled to any wages, under the British law or under the contract signed by them, as they had already been paid in full for the services rendered. Notwithstanding this fact, they brought suit against the vessel, claiming to be paid again for their services, on the ground that under the American law the contract into which they had entered was unlawful.

The libellants filed a libel *in rem* in the District Court of the United States for the Eastern District of Pennsylvania, and after formal hearing upon an agreed state of facts, a decree was entered by the Honorable John B. McPherson, Judge of that court, dismissing the libel.

The libellants then appealed to the United States Circuit Court of Appeals for the Third Circuit, and after hearing before that court the cause was certified to this court for decision.

ARGUMENT.

The act of Congress of December 21, 1898, 30 Stat. L. 755, the construction and validity of which are to be determined upon this appeal, is entitled "*An Act to amend the laws relating to American seamen, for the protection of such seamen and to promote commerce.*"

The material sections in question are as follows:

"Sec. 24. That section ten of chapter one hundred and twenty-one of the laws of eighteen hundred and eighty-four, as amended by section three of chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-six, be, and is hereby, amended to read as follows:

Sec. 10. (*a*) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person.

Any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court.

The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars."

The act then further provides, clause (*f*):

> "That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation;
>
> Provided, That treaties in force between the United States and foreign nations do not conflict."

The act of June 26, 1884, 23 Stat. L. 53, which the above act amends, is entitled "*An Act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes.*"

That act prohibits the payment of wages in advance, either by American or foreign vessels, although by its title it refers to American vessels alone.

It provided that the prohibition against the payment of wages in advance, should not apply to whaling vessels.

The first attempt on the part of Congress to govern the shipping contracts between a foreign vessel and the seamen shipping upon it, at an American port, is to be found in the act of June 19, 1886, 24 Stat. L. 79.

Section 3 of that act amended the act of June 26, 1884, by providing that any master, owner or consignee or agent of any foreign vessel who had violated the provisions of the act of 1884 should be liable to the same penalty as the master, owner or agent of a vessel of the United States would be for si milar violation.

An inspection of the titles of these various acts shows that they were intended to apply to American vessels only ; that is, vessels registered or enrolled under the laws of this country.

Section 4612 of the Revised Statutes provides that the word "seamen," as used in the statutes, means seamen upon vessels owned by the American citizens.

It is a well established rule of law, affirmed by this court *In re Ross, Petitioner*, 140 U. S. 453 and in England in the *Nina*, 2 L. R. P. C. 39, that a seaman, whatever his nationality may be, by enlisting upon a foreign vessel, by that act, becomes a seaman of the nationality of the foreign vessel. Consequently those of the libellants, who were American citizens, by enlistment upon the "Eudora," became British seamen.

If these principles be borne in mind, it becomes evident that the act of 1898, in so far as it attempts to regulate the contracts of shipment with seamen upon foreign vessels, is inartificially prepared. That provision is a mere excrescence upon legislation, intended by its title to apply to American vessels only, and it becomes difficult, therefore, to ascertain the true legislative intent, that is, whether Congress intended that the act should apply only to seamen of American citizenship shipping upon foreign vessels, or, whether it intended to govern the contract entered into between every vessel at an American port, with every seaman, without reference to his citizenship or nationality. If the former was the legislative intention then the act of Congress is meaningless, because there is nothing upon which it can take effect, there being, under the well

recognized principles of international law, no American seamen upon British vessels.

If Congress intended to go further, however, and to regulate the contract of every seaman, without respect to his nationality, made at an American port with a foreign vessel, then the clause is invalid because Congress lacks such power.

Passing, therefore, the mere construction of the text of the act, we arrive at the broader question involved in the case, that is, whether Congress possesses the power to regulate by legislation a contract entered into at an American port by seamen for service upon a foreign vessel.

It is submitted that Congress possesses no such power, and that clause f of Section 10 of the Act of 1898 is invalid for the following reasons:

1. *It is a well recognized principle of international law that a vessel is a detached portion of the territory of the country whose flag it flies, and, therefore, a contract entered into by seamen at an American port for service upon a British vessel is to be performed upon British territory, and its validity and all other questions of internal management of the vessel must be determined by British law, and Congress has no power to regulate the validity of contracts to be performed without the territory of the United States, even if signed upon American soil or the other internal affairs of the vessel.*

2. *The attempt to regulate seamens' contract made at an American port with a foreign vessel is invalid because Congress lacks power of legislation over contracts of foreign vessels, made at American ports, other than conferred by the commerce clause of the Constitution, and a contract of seamen for service upon a*

foreign vessel is not commerce, within the meaning of that clause.

3. *The clause is invalid, because the prohibition of a contract for the payment of wages to a seaman in advance is an infringement of the liberty to enter into a contract guaranteed by the Fifth Amendment to the Constitution.*

4. *The provision of the Act of 1898, that the ship master who pays a seaman's wages in advance shall be compelled to pay the seaman twice for the same service, is repugnant to the constitutional provision that property shall not be taken without due process of law.*

I.

The bark "Eudora," being a British vessel, was a detached portion of the territory of Great Britain, while lying in the port of New York, and all questions of internal management of the vessel are to be determined by the British law, and the act of 1898 being an attempt to regulate the internal affairs of the bark, is invalid.

In modern times many of the disputed principles of international law have become settled. Amongst the principles so settled are those that a merchant vessel is a detached portion of the territory of the country whose flag it flies; that even while in the ports of another country, all matters of its internal management are to be governed by the law of the country whose flag it flies and that it submits itself only to the jurisdiction of the foreign power in so far as matters of public peace and tranquillity are concerned. It is a corollary deduced from these principles that a seaman, no matter what his nationality may be, by shipment upon a vessel becomes a sea-

man of the nationality of that vessel, and his rights and obligations are to be determined by the law of the country whose flag that vessel flies.

The principle that the "Eudora" was a detached portion of British territory is no longer disputed. The *Scotia*, 14 Wall. 170; *Dana's Wheaton's Int. Law*, sec. 106; 1 *Kent's Com.* 26, *The Lamington*, 87 Fed. 754.

The modern law upon this general subject is very clearly stated by Mr. Chief Justice WAITE in *Wildenhus' Case*, 120 U. S. 1. at 12:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or the interests of its commerce should require."

In *U. S.* v. *Rogers*, 150 U. S., 249, at page 264, Mr. Justice FIELD in delivering the opinion of the court, quotes with approval the language of Mr. Webster, while Secretary of State, in his letter to Lord Ashburton, of August, 1842. In that letter Mr. Webster said as follows:

> "It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion. This is the doctrine of the law of nations,

clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations. If a murder be committed on board of an American vessel by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offence is cognizable and punishable by the proper court of the United States in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same. It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that *enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.*"

In commenting upon the above language Mr. Justice FIELD said that Mr. Webster "stated with great clearness and force the doctrine which is now recognized by all countries."

The principle of law, that a seaman who ships upon a vessel becomes a seaman of the nationality of that vessel, is very clearly set forth by Mr. Justice FIELD in delivering the opinion of the Supreme Court *In re Ross, petitioner*,, 140 U. S., 453:

"The position that the petitioner, being a subject of Great Britain, was not within the jurisdiction of the consular court, is more plausible, but admits, we think, of a sufficient answer. *The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship 'Butlion.' By such enlistment he becomes an American seaman—one of an American crew on board of an American vessel—and, as such, entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities.* Although his relations to the British government are not so changed that, after the expiration of his enlistment on board of the American ship, that government may not enforce his obligation of allegiance, and he, on the other hand, may not be entitled to invoke its protection as a British subject; that relation was changed during his service of seaman on board of the American ship under his enlistment. *He could then insist upon treatment as an American seaman, and invoke for his protection all the power of the United States which could be called into exercise for the protection of seamen who were native born. He owes for that time to the country to which the ship on which he is serving belongs a temporary allegiance, and must be held to all its responsibilities.* The question has been treated more as a political one for diplomatic adjustment than as a legal one to be determined by the judicial tribunals, and has been the subject of correspondence between our government and that of Great Britain.

"The position taken by our government is expressed in a communication from the Secretary of State to the British government, under date of June 16, 1881. It was the assertion of a principle which the Secretary insisted 'is in entire conformity with the principles of English law as applied to a mercantile service almost identical with our own in its organization and regulation. That principle is that when a foreigner enters the mercantile marine of any nation and becomes one of the crew of a vessel having undoubtedly a national character, he assumes a temporary allegiance to the flag under which he serves, and in return for the protection afforded him becomes subject to the laws by which that nation, in

> the exercise of an unquestioned authority, governs its vessels and seamen. If, therefore,' he continued, 'the government of the United States has, by treaty stipulation with Japan, acquired the privilege of administering its own laws upon its own vessels and in relation to its own seamen in Japanese territory, then every American vessel and every seaman of its crew are subject to the jurisdiction which by such treaty has been transferred to the government of the United States.' "

It is clear, therefore, that by the general principles of international law and in the absence of local legislation, a vessel, while in the ports of a foreign country, has the right to ship seamen in that port under the terms and upon the conditions imposed by the law of the country whose flag it flies.

Not only has this doctrine the support of the authorities to which we have referred, but it has been expressly recognized and asserted by Congress.

Section 4517 of the revised statutes provides that every master of an American merchant vessel, who engages any seaman at a place out of the United States, shall engage such seaman before a consular officer or commercial agent, and the rules governing the engagement of a seaman before a shipping commissioner in the United States, shall apply to such engagement before a consular officer or commercial agent.

If the contention of the libellant in this case is to be supported there would be the singular spectacle of Congress asserting the right of an American vessel to ship a seaman in a British port under the provisions of the American law, but at the same time denying the right of a British vessel to ship seamen at an American port in accordance with the provisions of the British law.

The American legislation upon this point is identical with the provisions of the Merchants' Shipping Act of Great Britain, which was enacted in 1854, a number of years prior to the enactment of the law which was incorporated in section 4517 of the Revised Statutes.

In the *Montapedia*, 14 Fed. Rep. 427, Judge BILLINGS discusses the identical legislation of Great Britain and the United States upon this subject, and arrives at the conclusion that these laws must be considered as a mutual concession, that each nation in shipping seamen upon her merchant vessels is to follow its own laws.

If this is true, then such mutual legislation might be deemed a tacit convention (Vattel, Law of Nations, Sec. 25).

The question which arises in this case is whether Congress has the power to abolish the well-recognized principle of international law here before stated, and to assert that all contracts of shipment made in American ports with foreign vessels shall be made under the provisions of the American law.

We submit that Congress lacks such power; first, because the doctrines above set forth are firmly established principles of the law of nations, and that Congress or this country alone has not power to change the law of nations; and, second, that the validity of this contract is to be determined by the law of the place of performance, that is, British territory, and that Congress possesses no power of legislation over foreign territory.

Upon the first point, as to the inability of Congress or this country to change the established law of nations upon this subject, we call the attention of

the court to the decision in the case of the *Scotia*, 14 Wall., 170.

That case arose out of a collision between the American ship "Berkshire" and the English ship "Scotia." The American ship was guilty of fault in carrying a white light prohibited by the Navigation Rules of 1864. These rules were the first ever adopted and had been generally adopted by other nations. It was contended that the American law was a mere municipal regulation governing American vessels alone and that the English vessel was not entitled to complain of the failure of the "Berkshire" to comply with the American law. But the Supreme Court held otherwise, not on the ground that the municipal law had any extra territorial force or that the American law was to be applied, simply because the action was in an American court, but because the universal adoption of these rules by nearly all civilized nations had modified and changed the existing maritime law, and the rules, therefore, were applicable to vessels of all nations.

Mr. Justice STRONG, in delivering the opinion of the court, said, at page 187 :

> "It must be conceded, however, that the rights and merits of a case may be governed by a different law from that which controls a court in which a remedy may be sought. The question still remains, what was the law of the place where the collision occurred, and at the time when it occurred. Conceding that it is was not the law of the United States, nor that of Great Britain, nor the concurrent regulations of the two governments, but that it was the law of the sea, was it the ancient maritime law, that which existed before the commercial nations of the world adopted the regulations of 1863 and 1864, or the law changed after those regulations were adopted? *Un-*

doubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, but because it has been generally accepted as a rule of conduct. Whatever may have been its origin, whether in the usages of navigation or in the ordinances of maritime states, or in both, it has become the law of the sea only by the concurrent sanction of those nations who may be said to constitute the commercial world. Many of the usages which prevail, and which have the force of law, doubtless originated in the positive prescriptions of some single state, which were at first of limited effect, but which when generally accepted became of universal obligation. The Rhodian law is supposed to have been the earliest system of marine rules. It was a code for Rhodians only, but it soon became of general authority because accepted and assented to as a wise and desirable system by other maritime nations. The same may be said of the Amalphitan table, of the ordinances of the Hanseatic League, and of parts of the marine ordinances of Louis XIV. They all became the law of the sea, not on account of their origin but by reason of their acceptance as such. And it is evident that unless general assent is efficacious to give sanction to international law, there never can be that growth and development of maritime rules which the constant changes in the instruments and necessities of navigation require. Changes in nautical rules have taken place. How have they been accomplished, if not by the concurrent assent, express or understood, of maritime nations? When, therefore, we find such rules of navigation as are mentioned in the British orders in council of January 9th, 1863, and in our Act of Congress of 1864, accepted as obligatory rules by more than thirty of the principal commercial states of the world, including almost all which have any shipping on the Atlantic Ocean, we are constrained to regard them as in part at least, and so far as relates to these vessels, the laws of the sea, and as having been ths law at the time when the collision of which the libellanto complain took place.

> "This is not giving to the statutes of any nation extra territorial effect. It is not treating them as general maritime laws, but it is recognition of the historical fact that by common consent of making, these rules have been acquiesced in as of general obligation. Of that fact we think we may take judicial notice. Foreign municipal laws must indeed be proved as facts, but it is not so with the law of nations."

There have been repeated instances of application of the law as here stated in the conventions of representatives of the different countries, called for the purpose of formulating general rules for preventing collisions at sea.

The contract of shipment entered into this case by the seamen of the "Eudora" was to be performed exclusively upon British territory, and, therefore, its validity is to be determined by the British law.

The appellant relies largely upon the decision of Judge BRADFORD, of the District Court for the District of Delaware, in the *Kestor*, 110 Fed. 432, and of Judge HANFORD, District Court for the District of Washington, in the *Troop*, 117 Fed., 557. It will be seen that in both of these decisions there is a fundamental error as to the law upon this subject. Both of them are based upon a supposed principle of law, that the essential validity of a contract is to be determined by the law of the place where it is executed. Judge HANFORD says that the general rule is, that the law of the place governs in the determination of all questions affecting the valid execution of contracts, and he seems to argue from that principle, that there was no execution of a valid contract. This is a singular confusion of the principles of law applicable to such cases. While it is true, generally speaking, that the law of the place

where a contract is executed governs the formalities of the execution, yet it has absolutely nothing to do with the essential validity of a contract, which is to be wholly performed elsewhere. There can be no serious contention in this case as to the formal execution of the contract. The only question is of its essential validity.

The errors which have frequently arisen out of misunderstanding as to the meaning of the term *lex loci contractus*, are clearly pointed out by this court in *Pritchard* v. *Norton*, 106 U. S., 124.

The general rule repeatedly declared by this Court is, that while there may be a presumption that a contract is to be performed at the place of its execution, but if the contract, by its terms, is to be performed elsewhere, the place of performance is the place of the contract and the law of that place will control. *London Assurance* v. *Companha de Moagens*, 167 U. S., 149; *Coghlan* v. *Ralroad*, 142 U. S., 101; *Hall* v. *Cordell*, 142 U. S., 116; *Andrews* v. *Pond*, 13 Peters, 65; *Miller* v. *Tffany*, 13 Wall., 310; *Pr tchard* v. *Norton*, 106 U. S., 124; *Steam Nav. Company* v. *Phœnx Insurance Company*, 129 U. S., 154.

The sovereignty of this country is co-extensive with its territory only, and Congress possesses no power of legislation upon British territory.

> *Hall's International Law*, 4th Edition, Sec. 10.

Congress, in this case, has not attempted to establish a mere law of the forum, but has attempted to regulate the essential validity of a contract. If Congress had attempted to establish the law of the

forum, then in every case of a suit brought in this country for sailor's wages against a British vessel, no matter whether executed in England or elsewhere, the American law would have to be applied. We do not suppose such a contention would be seriously made. Therefore, this legislation of Congress can be sustained only if its right to legislate over a contract to be performed upon British territory would be recognized by the courts of every country, under the general principles of international law.

What reasons are given in support of the contention, that Congress has authority to govern such contracts? The appellant relies principally upon the cases of the *Kestor*, *supra*, and the *Troop*, *supra*.

We have already pointed out the fundamental error made in these cases in the assertion of a supposed principle of law, that the essential validity of a contract is to be determined by the law of the place of execution, and the consequent error that because the contract was executed upon American territory Congress had the power to legislate, not merely as to the formalities of execution, but as to the validity of its essential provisions. The mere fact that the contract was signed in New York, in itself, does not give Congress the power to declare the contract invalid, or to punish as a crime the payment of wages in advance, because Congress has no general power to declare contracts unlawful and the execution of the contract upon the soil of the State of New York certainly excludes the congressional power of legislation, unless it is granted under the commerce clause.

Judge BRADFORD in the case of the *Kestor*,

supra has fallen into another error, in failing to follow the principle declared by this Court *in re Ross*, *supra*, and other cases, that is, that a seaman by shipping upon a foreign vessel becomes a seaman of the country of that vessel.

It will be seen by a reference to the opinion in the *Kestor* case, that the learned Judge was of the opinion that there was some difference between American citizens enlisting on an American vessel and foreign citizens enlisting upon the same vessel, so far as the application of the act of Congress was concerned. He refers at some length to the difficulties which would arise out of the misrepresentation of nationality by seamen at the time of shipment on American or foreign vessels. It is true that much difficulty would arise, if the law were as the learned Judge assumes, that is, that a British subject shipping upon an American vessel, would be a British seaman and that an American subject shipping upon a British vessel, would still be an American seaman. There can be no question but if that rule were correct, great confusion would ensue. According to that theory, if a vessel had on board seamen shipped at ports of different countries, for instance, in America, England, France and Germany, their rights and duties would be determined by the laws of the country, where they actually shipped, rather than by the law of the flag of the vessel. In order to do full justice to his crew, under these circumstances, the master would have to be more than a sea lawyer. If the American and the French sailor were guilty of disobedience, the master dare not flog the former, but possibly might so punish the latter. The American sailor would be entitled to demand the food prescribed

by American law, the English sailor would probably be alone entitled to grog and the French and German sailor would each demand different food. Hopeless, indeed, would be the confusion which would result from the application of that principle. The difficulty is avoided, not as Judge BRADFORD has assumed, by the application of the law of the place where the sailor ships, or the law of his nationality, which would only increase the confusion, but it is prevented by the application of the principle declared by the Supreme Court *in re Ross*, that is, no matter what may be the nationality of the seaman, *by enlistment on a British vessel he becomes a British seaman*, and as such entitled to the protection and benefits of the British Merchants' Shipping Act and subject to all its obligations and liabilities.

This principle does not seem to have been called to the attention of Judge TOULMIN in the *United States* v. *Nelson*, 100 Fed., 125, as he there lays down a different rule (although his remarks are but *dicta*), that the acts of Congress passed for the benefit of "American seamen," mean, not seamen on American vessels, but Americans whose occupation is that of seamen. It is respectfully submitted that this ruling is in conflict with the decision of the Supreme Court *in re Ross*, as it would be an attempt to legislate for seamen upon foreign vessels, and would deprive foreigners serving upon American vessels of the benefit of the American law.

II.

The power of Congress, under the commerce clause, to regulate shipping contracts of seamen with a foreign vessel.

If the attempt on the part of Congress to regulate a contract between a foreign vessel and seamen shipping upon it can be sustained at all, it must be on the ground that it had such power under clause 3 of section 8 of article 1 of the Constitution, providing that Congress shall have power "to regulate commerce with foreign nations and among the several states, and with the Indian tribes." No other clause has any application.

If that clause contains no grant of legislative power to Congress over such contracts, then the right to regulate them, if it exists in any legislative body in this country, which is denied, must be vested in the legislatures of the several states, under the reservation to them, in the 10th Amendment to the Constitution, of the powers not delegated to the United States.

The question, therefore, which this case presents is whether the provision of the act of 1898, prohibiting the master of a foreign vessel from entering into a contract to pay the wages of a seaman in advance, is a valid exercise of the power conferred upon Congress to regulate commerce with foreign nations.

The authorities construing the term commerce have been so fully collected and considered recently in one of the lottery ticket cases (*Champion* v. *Ames*, 188 U. S.—), that no extended citation or discussion of them is necessary. The construction of the term in all of the opinions, from that of

Chief Justice MARSHALL in *Gibbons* v. *Ogden*, 9 Wheat. 1, to *Champion* v. *Ames*, *supra*, is that the word commerce has a double significance, including traffic, that is, the buying and selling or interchange of commodities, and commercial intercourse or the carriage of those commodities.

The term has been held to include not only the carriage of merchantable commodities, but also the carriage of passengers (*Passenger Cases*, 7 How., 283); bills of lading, because they represent the goods carried (*Woodruff* v. *Farham*, 8 Wall., 123), and the transmission of ideas, wishes, orders and intelligence by telegraph (*Western Union Telegraph Co.* v. *Pendleton*, 122 U. S., 347). It has also been held to include navigation (*Gibbons* v. *Ogden*, 9 Wheat. 1.)

In *Champion* v. *Ames*, *supra*, Mr. Justice HARLAN, in delivering the opinion of the Court, thus summarizes the decisions construing the term commerce:

> "The cases cited, however, sufficiently indicate the grounds upon which this court has proceeded when determining the meaning and scope of the commerce clause. They show that commerce among the States embraces navigation, intercourse, communication, traffic, transit of persons and the transmission of messages by telegraph."

It will be noticed that it has been held that navigation is within the scope of the commerce clause of the Constitution. But as the term navigation has been used in the decided cases, it is almost equivalent to commercial intercourse or to the carriage and transportation of goods. The expression was first used by Chief Justice MARSHALL in *Gibbons* v. *Odgen*, 9 Wheaton 1, and it was there held that

the power to regulate commerce includes the power to regulate navigation.

A consideration of the facts of that case will show that the word navigation was there used in the sense of transportation, or carriage of goods.

The legislature of New York had enacted a statute granting to Robert R. Livingston and Robert Fulton, the exclusive navigation of all of the waters within the jurisdiction of that state, with boats moved by fire or steam, for a term of years and authorizing the chancellor to award an injunction restraining any person whatever from navigating those waters with boats of that description.

Odgen became the assignee of that right and sought to restrain Gibbons, who was in possession of two steamboats, from employing them in running between New York and Elizabethtown, New Jersey. These statutes were held by this court to be invalid, because repugnant to the commerce clause of the Constitution, as that clause included the navigation of the navigable waters of the United States, by vessels engaged in interstate or foreign commerce. The effect of the New York statute was to create an obstruction to interstate traffic by depriving any person, other than those named in the statute, from engaging in the interstate carriage of goods or passengers by steamboats.

At the time of that decision (1824) the principal part of interstate and foreign commerce was carried on by vessels and in saying that navigation was commerce, the court only applied to the facts involved, the broader principle declared, that is, that commerce included not only traffic in goods, but the carriage or transportation of them, and held that

navigation, being one method of interstate carriage, was commerce.

In thus asserting that navigation, being a kind of carriage of goods, was commerce, and that the removal of an obstruction to it was within the power of the federal government, the court declared the doctrine which has been since repeatedly asserted, that is, that the federal government has full power to remove obstructions of every character, artificial or natural, which in any way interfere with or regulate the carriage of goods between the several states. Under the power to regulate interstate commerce the federal government has the power to improve navigable streams and to remove natural obstructions to navigation or commerce (*County of Mobile* v. *Kimball*, 102 U. S., 691), or an obstruction to interstate carriage by a mob. *In re Debs*, 158 U. S., 564. *Gibbons* v. *Ogden*, *supra*, is an instance of the right of the federal government to remove obstructions created by a state.

In *Hooper* v. *California*, 155 U. S., 648, it was said by Mr. Justice WHITE, that the authority to regulate interstate commerce gives Congress the power to regulate the instrumentalities thereof. The decisions have not clearly defined what constitute these instrumentalities or the scope of the regution thereof, but it must be assumed that Congress has the right to regulate the navigation of a ship, in a broader sense than that term was used in *Gibbons* v. *Ogden*, *supra*. But such regulation of the ship, as an instrumentality of commerce, must be limited to its business as a ship engaged in the carriage of goods or passengers, and not to those incidental contracts which shipowners may enter into for the

purpose of carrying on their business as carriers. For instance, Congress unquestionably has the right, under the commerce clause, to adopt sailing rules to prevent collisions, by regulating the navigation of vessels while upon the navigable rivers of the United States. But would it be seriously contended that because a ship may be an instrumentality of commerce, Congress would have the right to regulate a contract with a ship builder for construction of a vessel, or one for the purchase thereof, or one for the purchase of food for the passengers about to be carried, or of a contract for the purchase of bunker coal to enable the steamship to engage in interstate traffic?

The true line of demarcation between the power possessed by Congress, under the commerce clause, and that reserved to the several states, seems to be that Congress may regulate the relations of the carriers, *as carriers*, with the public, but that those contracts which are incidental only to the carriage of goods, in interstate or foreign commerce, are purely local in character and such regulation of them as is lawful, is reserved to the several states.

If Congress could regulate such contracts, then under the guise of a statute to regulate interstate commerce, it could control every contract entered into by a railway carrying goods between two states, to enable it to perform its business of carriage. It could regulate its contracts of employment with its servants, its contracts for the purchase of rails and of ties and of its entire rolling stock and equipment. Surely no such contention would be seriously made.

The commerce clause does not give Congress

the right to regulate a contract, merely because one of the parties to it happens to be engaged in interstate or foreign commerce, but only when the contract relates to commerce.

It is the subject matter of the contract and not the character or business of one of the parties which brings the contract within congressional control under the commerce clause.

The contract in this case is similar to one of insurance, which this court in *Paul* v. *Virginia*, 8 Wall., 168, held not to be commerce but a contract merely in aid of commerce.

Mr. Justice FIELD said in delivering the opinion in that case (p. 183):

> "Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York, whilst in Virginia would constitute a portion of such commerce."

In *Hooper* v. *California*, 155 U. S., 648, it was argued that a contract for marine insurance was

commerce, but the court following its previous decision in *Paul* v. *Virginia*, held otherwise. In delivering the opinion of the Court, Mr. Justice WHITE said (p. 653):

> "It is evident, then, as we have said above, that the attempt to so distinguish between policies of marine insurance and policies of fire insurance, as to reach the deduction that there is a constitutional difference between the business of a corporation issuing polices of the other kind, which affects the question of a State's authority to control the business of either, is based upon a fundamental misconception of the nature of the constitutional provision relied upon. It ignores the real distinction upon which the general rule and its exceptions are based, and which consists in the difference between interstate commerce or an instrumentality thereof on the one side and commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. *If the power to regulate interstate commerce, applied to all the incidents to which said commerce might give rise, and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States; and would exclude State control over many contracts purely domestic in their nature.*
>
> The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against 'the perils of the sea.'"

In the consideration of this aspect of the case care must be taken not to confuse the control of Congress over the contracts of a foreign vessel, not directly relating to the carriage of goods and the legislative control exercised by Congress over American vessels. It is denied that Congress has the right to enact a statute of this character, even

as to American vessels; but, on the other hand, it is admitted that over American vessels Congress has unquestionably greater authority and control than over foreign vessels. This authority over American vessels is not based upon the commerce clause of the Constitution, however, but is due to the fact that the United States possesses the same police power over American vessels, as the several states possess over territory within their limits. The authority of Congress to create an American merchant marine may be traced to the commerce clause, but, as upon the creation of such property, it becomes national in character, and not a part of the territory of any state, Congress has full police power over it.

The doctrine is now firmly established that a vessel is a detached, floating portion of the territory of the country whose flag it flies. *The Scotia*, 14 Wall., 170-184; *In re Ross*, 140 U. S., 453; *Wilson* v. *McNamee*, 102 U. S., 572, 574; *The Lamington*, 87 Fed., 752; 1 *Kent Com.*, 26; *Wheaton's International Law* (Dana's ed.), 106; 3 *Wharton International Law*, *supra*, 228: *Vattel's Law of Nations*, bk. 1, chap. 19, sec. 216; *Bluntschli*, sec. 319; *Seagrove* v. *Parks*, 1 Q. B. D., 551.

An American vessel, registered or enrolled in accordance with the laws of the United States, being thus a detached portion of the national territory, and not a part of the territory of any particular state, Congress, over such vessels, has the same police power as the various states have over the territory within their limits.

U. S. v. *De Witt*, 9 Wall., 41.

This police power was recognized and asserted by the framers of the Constitution when they conferred upon Congress the power to define and punish piracy and felonies committed upon the high seas.

The basis of the authority of Congress over American vessels was discussed in the case of *White's Bank* v. *Smith*, 7 Wall., 646.

In that case the question was as to the authority of Congress to pass the recording act of July 29, 1850, regulating the recording of bills of sale and mortgages of vessels of the United States. A mortgage upon the schooner "Emmett" was recorded in the office of the Collector of Customs at Buffalo, in accordance with the provisions of the above act, and the power of Congress over the title and property of vessels of the United States, to such an extent as to enable it to pass a recording act, was questioned.

In delivering the opinion of the Court sustaining the power of Congress to pass the act of 1850, Mr. Justice NELSON said:

> "*Ships or vessels of the United States are the creations of the legislation of Congress.* None can be denominated such or be entitled to the benefits or privileges thereof, except those registered or enrolled according to the Act of September 1, 1789; and those which, after the last day of March, 1793, shall be registered or enrolled in pursuance of the Act of 31st December, 1792, and must be wholly owned by a citizen or citizens of the United States, and to be commanded by a citizen of the same."

Bearing in mind this distinction between the power of Congress over American and foreign vessels, it is obvious that Congress may have greater legislative power over the former than the latter, and the validity of a provision governing American vessels, therefore, is not the true test of the validity

of legislation attempting to control contracts entered into by seamen with foreign vessels, while lying at our ports.

Confining the authority of Congress over the contracts of foreign vessels to its true limit, that is, to the power to regulate foreign commerce, a single question arises.

Does a contract for the employment of a seaman upon a foreign vessel, in an American port, fall within the scope and meaning of the commerce clause, as heretofore construed by the Court? To ask this question is to answer it. The contract is one of that large class which may be incidental to the carriage of goods or passengers, but it is not a contract for carriage or transportion, and it is therefore beyond the legislative control of Congress. Congress having no authority over such contracts, other than conferred by the commerce clause, the Act of 1898, in so far as it applies to foreign vessels, is invalid.

III.

The prohibition contained in the act of 1898 against the payment of wages to a seaman in advance is a violation of the liberty to contract, guaranteed by the Constitution.

The act of 1898 provides as follows:

> "Sec. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same or to pay such advance wages to any other person.
>
> Any person paying such wages shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court

> The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages.
>
> If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offence be liable to a penalty of not more than one hundred dollars."

If a shipping contract made by seamen with a foreign vessel is not foreign commerce, and Congress therefore lacks the power to legislate over it, that is the end of the case; but suppose for the purpose of the argument that Congress has such power, are not the above quoted sections unconstitutional, because they prohibit the fundamental right to enter into a contract, guaranteed by the constitution?

Under the decision in *Champion* v. *Ames*, 188 U. S.—Congress apparently has the same plenary powers of regulation and control over all interstate and foreign commerce, as the various states have over their internal affairs under their police power and Congress may, in its discretion, regulate or prohibit such commerce where, if carried on would, in its judgment be prejudicial to public health, public safety or public morals or general public welfare. If, therefore, Congress has the right to legislate over contracts of seamen with foreign vessels, because such contracts are commerce, it would seem to have the same plenary powers over them as it would have over contracts of seamen upon American vessels, under the police power, which we

ave heretofore argued that Congress has over American vessels.

Assuming, however, that Congress has such plenary power, either under the commerce clause, as concerns foreign vessels, or the police power over American vessels, it does not follow that the power is without limitation or restriction, and that it may arbitrarily exercise such power without restraint.

By the fifth and fourteenth amendments to the Constitution is guaranteed the right of the individual to enter into all lawful contracts which may be necessary or essential to carry out a business or occupation not contrary to law.

In delivering the opinion of this court in *Allgeyer* v. *Louisiana*, 165 U. S., 579, Mr. Justice PECKHAM, in delivering the opinion of the court, thus construes the constitutional guarantee of liberty:

> "The liberty mentioned in that amendment means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to successful conclusion the purposes above mentioned."

This general statement of the law has been repeatedly approved by this court, and in as late a case as *Champion* v. *Ames*, *supra*.

This constitutional guaranty of liberty to contract does not necessarily mean that Congress or the legislatures of the various states shall not have the

power to prohibit contracts at all. The constitutional grant of liberty to contract is limited to some extent by both the commerce clause and the police power, but on the other hand, neither the commerce clause nor the police power can pass beyond its limits. The grant of liberty does not give the right to enter into a contract which Congress or the state legislatures have the power to declare unlawful, but it does secure and protect the fundamental rights enumerated by Mr. Justice PECKHAM in *Allgeyer* v. *Louisiana*, *supra*.

While it is true that is largely in the discretion of the legislatures of the several states or of Congress to decide when public policy requires the prohibition of certain contracts, yet on the other hand the mere fact that the enactment purports to be for the regulation of commerce, the protection of public safety, public health or public morals is not conclusive upon the courts.

Mugler v. *Kansas* 123 U. S., 661; *Lawton* v. *Steele*, 152 U. S., 133; *Booth* v. *Illinois*, 184 U. S., 425; *Otis* v. *Parker*, 187 U. S.,—; *Champion* v. *Ames*, 188 U. S., —

In the latter case, Mr. Justice HARLAN said, in delivering the opinion of the court:

> "The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the states. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress to regulate commerce among the states, although plenary, cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore may not be exercised so as to infringe rights secured or, protected by that instrument. It would not be difficult

> to imagine legislation that would justly be liable to such an objection as that stated, and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the states. But as often said, the possible abuse of a power is not an argument against its existence. If what is done by Congress is manifestly in excess of the power granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people."

The broad question which this case raises is whether legislation in this country prohibiting a contract whereby an employer agrees to pay wages to an employee in advance of the time they are earned, is void under the constitutional guarantee of the liberty to contract. If such legislation is unconstitutional then the prohibition is equally invalid whether the contract be made with an American or foreign vessel.

The decided cases upon this subject throw little or no light upon the present case, because as this court has said, only general principles can be declared, and no fixed or invariable rule can be applied to such cases. It is a question for the determination of the court in each case, whether the statute is in violation of the fundamental rights guaranteed by the constitution.

In *Holden* v. *Hardy*, 169 U. S., 366 (1897), this court decided that a statute of Utah, providing that the period of employment of miners working in all underground mines or workings should be eight hours per day, excepting in cases of emergency, was a valid exercise of the police power of the state and did not violate the provisions of the fourteenth amendment to the Constitution of the United States by abridging the privileges or immunities of its

citizens or by depriving them of their property or denying to them the equal protection of the laws.

It was argued with much force that this statute was illegal, because it violated the fundamental right of an employer and his employees to regulate the hours of labor by a contract entered into by them, but it was held that the statute was a lawful exercise of the police power of the state for the *maintenance of public health.*

The opinion delivered by Mr. Justice BROWN so fully considers the previous decisions of this court, and of the various state courts in relation to this subject, and the principles of law declared in them, that an extended discussion of them here is unnecessary.

One of the most recent decisions upon this subject is *Knoxville Iron Company* v. *Harbison*, 183 U. S., 13 (1901), where it was held that an act of the legislature of the state of Tennessee, requiring redemption in cash of store orders or other indebtedness issued by employers in payment of wages due to employees, does not conflict with any provision of the constitution of the United States relating to contracts.

The opinion of Mr. Justice Shiras relies very largely upon the decision of the Supreme Court of Tennessee, from which he quotes largely. It is said in the opinion of the Supreme Court of Tennessee that the act in question contains no prohibition against the issuance of any of the obligations referred to nor against payment in merchandise or otherwise according to their terms, but only a provision that they shall be paid in money at the election, and upon a prescribed demand of the owner.

The distinction between that case and the present one seems clear. The contract of employment in that case contained no provision that the employee should receive compensation for his services in merchandise or coal, and the facts show that the acceptance of these orders was purely optional with the employee and that many of the employees did not accept them. Apparently, therefore, all that was decided in that case, was that where there was a contract that the laborer should receive a fixed compensation, that the legislature, under the police power, could provide that he should receive that compensation in money.

But would the legislature have the right to prohibit a contract of employment, containing an agreement that the laborer should receive compensation for his services in coal or other merchandise? Such an act would clearly seem to be a violation of the constitutional guarantee of the right to enter into a contract in the pursuit of a lawful calling. If a legislature could so provide, then it would have the power to absolutely prohibit the bartering of commodities and could prohibit every interchange, except a sale, where the person disposing of the property would receive money in payment therefor.

It was held in *Addyston Pipe Company* v. *U. S.* 175; U.S. 211, that Congress, under the power of regulating commerce amongst the states, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations, where the natural and ordinary effect of such a contract shall be, if carried out, directly and not as a mere incident to other and innocent purposes to regulate to any extent interstate or foreign commerce, and that as Congress possessed this power

under the commerce clause, the provision in the Constitution regarding the liberty of the citizen is to some extent limited by it.

Booth v. *Illinois*, 184 U. S. 425, and *Otis* v. *Parker*, 187 U. S. —, both sustain the power of a state to prohibit the purchase and sale of grains and stocks upon margins, &c. It was held that the state legislatures had the power to prohibit such contracts, because they tended to foster gambling contracts.

In the latter cases the states acted upon the principle that the contracts were opposed to public morals. But no such question arises in this case. Surely it would not be argued that a contract, whereby one man agrees to work for another, is immoral or is opposed to the public welfare of the state. How can it be converted into one which is opposed to public morals or general welfare by an agreement to pay the wages or any part of them in advance? If the servant obtains compensation for all the work he performs, without reference to the time of payment, is either he or the public welfare injuriously affected?

If a sailor, either in idleness, or debauchery, spends all of his money and gets into debt, before shipping, and sees fit to receive a portion of his wages in advance, to pay the debts so incurred, why is such an agreement immoral or opposed to public welfare? Why should a shipmaster who pays a seaman all of his wages, even if in advance, be subjected to the payment of the wages again, and to a penalty and imprisonment?

There is not the slightest contention in this case that the claimant took the slightest advantage of the libellants, nor that they did not receive ful- compensation for all service performed.

It may be said that the sailor is improvident and ought to be protected against his own improvidence. The better way to remedy that difficulty would seem to be for the seaman to reform—not to break the constitution and to punish the shipmaster for the improvidence of the sailor, by prohibiting him from paying wages in advance, under penalty of paying double wages to the seaman, and of fine and imprisonment.

As illustrating the character of this legislation, we call attention to the further provision of the act that it shall be a penal offence for any person to receive any remuneration from a seaman for procuring employment. Can such legislation be sustained? What immorality is there in the securing of employment for a seaman? And is it not an inviolable, fundamental right of every man to receive compensation for his service? Would an act requiring a seaman to work without compensation be lawful? No one would so contend. But if the seaman is entitled to compensation for his service, can he be absolved from paying others for service rendered to him? If Congress can require the man who conducts an intelligence office to render service to a seaman, without compensation, where does its power stop? If it has such power it can prohibit the boarding-house keeper from charging for board or the merchant for clothing. If contracts of this character can be regulated and prohibited by Congress, then the constitutional guarantee of the right to enter into a contract, in pursuit of a lawful calling, would seem to be purely mythical. If such contracts can be lawfully prohibited, it is difficult to imagine one which would be beyond the regulation of the legislative power.

IV.

Taking of private property without due process of law.

If further objection to the validity of this statute be needed, it may be found in that portion which provides that in no case shall the payment of wages in advance absolve the vessel, or master, or owner thereof, from payment in full after such wages shall have been earned. In other words, the provision is that the seaman shall receive double compensation for the same service. This is pure confiscation of the private property of the owner of the vessel, and deprives him of private property without due process of law.

V.

The Jurisdiction of the Admiralty Courts Over Wages, Claims of Seamen Against Foreign Vessels.

In conclusion, we desire to call the attention of the court to the character of the jurisdiction exercised by the court below in this case. It is not a case where the jurisdiction of the court was compulsory. The libellants, being alien seamen, were not entitled to demand, as a matter of right, that the court should exercise jurisdiction over their claim against the "Eudora," a foreign vessel.

It is unnecessary to argue at length as to the jurisdiction of the admiralty courts over wages claims, against a foreign vessel. The rule is universally accepted that the courts may, from motives of convenience, or of international comity, take jurisdition of suits between foreigners, not arising in the country of the forum. But where the foreigners

may resort to the courts of their own country without inconvenience, our courts generally decline to take urisdiction. Applying this rule the courts of this country have generally held that they will, in their discretion, take jurisdiction over claims of seamen against a foreign vessel where the voyage is ended in this country, or where the seamen have been dismissed or treated with cruelty. To decline to take jurisdiction in such cases would, in nearly all instances, deprive the seamen of any redress for wrongs. But on the other hand, the courts have declined to take jurisdiction over claims of foreign seamen, where there would be no hardship in compelling them to go to courts of the country of the vessel.

The *Walter A. Wallet*, 66 Fed. 1011, is an illustration. There the court declined to take jurisdiction over a claim of a British seaman for injuries received on a British ship on the high seas, because the seaman had not been discharged but would be returned to England on the vessel.

The law upon this subject has been stated by Mr. Justice BRADLEY in the *Belgenland*, 114 U. S., 355, at page 363, as follows:

> "For circumstances often exist which render it inexpedient for the Court to take jurisdiction of controversies between foreigners in cases not arising in the country of the forum; as, where they are governed by the laws of the country to which the parties belong, and there is no difficulty in a resort to its courts; or where they have agreed to resort to no other tribunals. *The cases of foreign seamen suing for wages, or because of ill treatment, are often in this category; and the consent of their consul, or minister, is frequently required before the Court will proceed to entertain jurisdiction; not on the ground that it has not jurisdiction, but that, from motives of convenience or international comity, it will use its discretion*

whether to exercise jurisdiction or not; and where the voyage is ended, or the seamen have been dismissed or treated with great cruelty, it will entertain jurisdiction even against the protest of the consul. This branch of the subject will be found discussed in the following cases: 'The Catherina,' 1 Pet. Adm., 104; 'The Forsoket,' 1 Pet. Adm., 197; 'The St. Oloff,' 2 Pet. Adm., 428; 'The Golubchick,' 1 W. Rob., 143; 'The Nina,' L. R. 2 Adm. and Eccl., 44; S. C. on appeal; L. R. 2 Priv. Co., 38; 'The Leon XIII,' 8 Prov. Div., 121; 'The Havana,' 1 Sprague, 402; 'The Becherdass Ambaidass,' 1 Lowell, 569; 'The Pawashick,' 2 Lowell, 142."

"In the absence of such treaty stipulations, however, the case of foreign seamen is undoutedly a special one, when they sue for wages under a contract which is generally strict in its character, and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interest of the ship owners as well as those of master and crew, as well when the ship is abroad as when she is at home. Nor is this special character of the case entirely absent when foreign seamen sue the master of their ship for ill treatment. On general principles of comity, admiralty courts of other countries will not interfere between the parties in such cases unless there is special reason for doing so, and will require the foreign consul to be notified, and, though not absolutely bound by, will always pay due respect to his wishes as to taking jurisdiction."

Although the certificate from the Circuit Court of Appeals to this court does not so show, yet the District Court took jurisdiction only after notice to the British Consul at Philadelphia.

The cases where wages have been allowed by the admiralty courts of this country to seamen upon foreign vessels, in accordance with the law of the country of the vessel, are too numerous to mention.

Since the decision in the *Catherine*, 1 Pet., 104 and the *Forsoket*, id, 197, there is an unbroken line of decisions in the admiralty courts following out

this principle. So far as we have been able to discover the decisions in the *Kestor*, *supra*, and the *Troop*, *subra*, are the only ones in the history of the jurisprudence of this country, where it has been held that the local and not the foreign law applies to the wages claims of sailors upon foreign vessels.

Not only does this rule apply to wages cases, but to all questions governing the rights and duties of seamen upon foreign vessels.

In the *Sirius*, 49 Fed., 825, the court applied the provisions of the British law as to the plimsol mark, in favor of the seamen.

In the *Amalia*, 3 Fed., 652, the court held that the seamen upon a Swedish vessel, were entitled to their discharge before the end of the voyage, because the master had violated the laws of Sweden, as to the proper provisions, by reason of which they became entitled to their discharge.

In the *Kambria*, 100 Fed., 118, the court ordered certain seamen upon a British vessel released, holding that they were so entitled under the British law

The British law has been applied to cases of personal injuries upon British vessels, while on the high seas or in British waters.

Egyptian Monarch, 36 Fed., 773;
Lamington, 87 Fed., 752.

Applying the rule above stated, it is obvious that the District Court did not exercise jurisdiction, as a duty imposed upon it by the Constitution, but was acting by comity, for the courts of Great Britain. The practice in such cases is, that instead of imposing upon the seamen the hardship of going to the country of the vessel to bring suit, our courts will exercise jurisdiction in aid of justice.

Our courts say in such cases *that they will act for the courts of the foreign country*, in order that justice shall be done to the seamen. It necessarily follows that when, under such circumstances, the courts take jurisdiction *they are bound to follow the foreign law.* They assume jurisdiction for *that very purpose* and to determine the rights and duties of the foreigners, by the law of their own country.

If the courts were bound to apply the local law in these cases, then the rights of the parties would be determined, not by any settled principle of law, but by mere chance. If under such a rule a court saw fit to exercise jurisdiction, the rights of the parties would be determined by local law, but if the court declined to exercise jurisdiction, the parties would have their own law applied in their own country.

It is submitted, therefore, that where the courts, in their discretion and in a spirit of comity, exercise jurisdiction in these cases they are entirely beyond the control of Congress. They act under the constitutional grant of jurisdiction over all admiralty and maritime causes.

Congress would be powerless to compel the federal courts to assume jurisdiction in such cases, and consequently they are equally powerless to require a court, which from motives of international comity, in its discretion, sees fit to take jurisdiction of an action between foreigners, to apply the local law in an action, instead of the foreign law properly applicable.

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